

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:39 p.m. on February 9, 2011, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Michael Wales, Kansas Legislative Research Department  
Marla Morris, Committee Assistant  
Allen Jeffus, Office Assistant

Conferees appearing before the Committee:

Representative TeriLois Gregory, District 10  
Majority Leader Arlen Siegfried

Conferees providing written testimony only:

Bill Harmon, A & H Air Conditioning, Heating and Plumbing, Baldwin City  
Kevin and Shawna Garber, Business Owners, Baldwin City

Others attending:

See attached list.

Bill Introductions:

Representative O'Hara requested introduction of a bill dealing with reappraisal on a ten year basis. Representative Carlson moved to introduce the proposed bill; Representative Kleeb seconded the motion. The motion carried.

Representative Fawcett requested introduction of a bill concerning delinquent taxes and the time the taxing authority is required to wait before foreclosure rights can be implemented. Representative Carlson moved to introduce the proposed bill; the motion was seconded by Representative Powell. The motion carried.

Representative Collins requested introduction of a bill concerning property taxation, relating to exemptions and mineral rights, repealing K.S.A. 79-420. Representative Carlson moved to introduce the proposed bill; the motion was seconded by Representative Powell. The motion carried.

Representative Worley requested introduction of a bill concerning business machinery and equipment tax reduction assessment fund, amending the formula to include rail and telecommunication equipment. Representative Carlson moved to introduce the proposed bill; Representative Kleeb seconded the motion. The motion carried.

Representative Powell, with permission from Speaker O'Neal, moved introduction of a bill concerning elections in a district that is trying to stagger the elections so they have continuity in the district. The motion was seconded by Representative Schwab, and the motion carried.

Representative Tyson moved introduction of a bill concerning a back-to-school sales tax holiday on school supplies. The motion was seconded by Representative Hedke. The motion carried.

Rep. Calloway moved introduction of a bill concerning school districts, relating to assessed values. Representative Weber seconded the motion, and the motion carried.

Rep. Kleeb moved to introduce a committee bill on dynamic scoring. Representative Schroeder seconded the motion. The motion carried.

Representative Brunk moved to introduce a bill concerning community improvement districts.

## CONTINUATION SHEET

Minutes of the House Taxation Committee at 3:39 p.m. on February 9, 2011, in Room 783 of the Docking State Office Building.

Representative Schwab seconded the motion. The motion carried.

Chairman Carlson opened the hearing on:

**HB 2161 – Retailers may choose place of business sourcing or destination sourcing as method to determine sites of taxable transactions for sales tax purposes.**

Chairman Carlson directed the Committee to the Fiscal Note on **HB 2161**, prepared by the Kansas Department of Revenue, placed in their daily packet (Attachment 1).

Chris Courtwright, Kansas Legislative Research Department, briefed the Committee on **HB 2161**, and summarized the history on origin and destination based sourcing based on previous legislation. **HB 2161** would allow businesses to choose between origin based or destination based calculations of retail sales tax rates. The legislation would require the chosen method to be applied to all sales. Richard Cram, Kansas Department of Revenue, joined Mr. Courtwright in responding to questions from the Committee.

Representative TeriLois Gregory, District 10, testified in support of **HB 2161**, and urged favorable passage of the Bill. Her testimony referenced two Baldwin City business owners, and the difficulties faced by small businesses in the computation of destination based sales tax. She stood for questions.

Majority Leader Siegfried, testified in support of **HB 2161**. He urged the Committee to take a long look at **HB 2161**, and give businesses the opportunity to choose between origin based or destination based sourcing (Attachment 2). He stood for questions.

Chairman Carlson directed the Committee to the written testimony in support of **HB 2161** from Bill Harmon, A & H Air Conditioning, Heating and Plumbing, Baldwin City (Attachment 3), and Kevin and Shawna Garber, Business Owners, Baldwin City (Attachment 4).

The Chairman closed the hearing on **HB 2161**.

The next meeting is scheduled for 3:30 p.m., February 10, 2011, in Room 783 of the Docking State Office Building for the purpose of hearing **HB 2160-Establishing the simplified state tax structure committee.**

The meeting was adjourned at 4:45 p.m.

HOUSE TAXATION COMMITTEE

DATE: February 9, 2011

[illegible]

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**From:** Richard.Cram@kdor.ks.gov  
**Sent:** Wednesday, February 09, 2011 1:50 PM  
**To:** Chris Courtwright; Gordon Self; Scott Wells; Marla Morris; sean.tomb@budget.ks.gov  
**Subject:** Fiscal Note HB 2161  
**Attachments:** pic27446.jpg

----- Forwarded by Richard Cram/Revenue/KDOR on 02/09/2011 01:48 PM -----

2011 House Bill 2161b Fiscal Note  
Introduced as a House Bill

#### Fiscal Note Development

Bill Assigned: 02/07/2011

Responses Due: 02/09/2011

Note Due to Budget: 02/10/2011

Status: Sent to Budget

Prepared By: Steven R Brunkan

Preliminary Completed: 02/09/2011

Reviewed by P&R: 02/09/2011

Approved by Secretary: 02/09/2011

Sent to Budget: 02/09/2011

Fiscal Impact: loss in FY 12 of \$9.73 M, SGF \$8.6 M and  
\$1.1M SHF

Administrative Impact:

#### M E M O R A N D U M

To:

House Taxation  
Date: 2-9-11  
Attachment: 1

Division of Budget

From: Kansas Department of Revenue

Date: 02/09/2011

Subject: House Bill 2161  
Introduced as a House Bill

Brief of Bill

House Bill 2161, as Introduced, concerns sales tax and the sourcing of taxable transactions for city and county taxes. The proposal amends K.S.A. 12-191 to enable a retailer to choose the situs of the tax for transactions. The retailer would be able to choose for all sales if the tax rate will be based on the place of business of the retailer or where the good delivered. The proposal only impacts local sales tax, it does not address the sourcing for state sales tax.

The Act would be effective July 1, 2011.

Fiscal Impact

Kansas is currently a full member state in the Streamlined Sales and Use Tax Agreement. The proposal would place the state out of compliance with the Agreement and could result in the potential loss of up to \$35 million in fiscal year 2012. This is estimated amount of state and local use tax revenue to be remitted in FY 2012 by out-of-state retailers due to our involvement with Streamlined Sales Tax. Retailers registering under the Agreement agree contractually to collect and remit use tax for member states. No such reporting and collection requirement exists for sales to non-member states. Remote retailers without nexus in the taxing state are not legally required to collect use tax on sales to customers in that state.

For FY 2010, Kansas received \$29.63 million in state and local use taxes from remote retailers. That amount is projected to reach \$35 million in FY 2012. In FY 2010, of the \$29.63 million received from remote retailer state and local use tax collections in FY 2010, \$8.3 million in state and local use taxes were received from remote retailers registered under the Agreement and contractually agreeing to collect those taxes for Kansas. It is estimated those collections will grow to \$12.97 million in FY 2012.

Those revenues are substantially at risk and will likely no longer be received should Kansas lose its member status, as such members would no longer be contractually required to remit use taxes on remote sales to Kansas. There is also the risk that additional use tax revenues currently being collected by other remote retailers not registered under the Agreement may decline by an unknown amount, potentially as much as another \$22 million in state and local use tax revenue, once they learn that Kansas is no longer a member state of the Agreement.

The loss of \$12.97 million in state and local sales tax receipts would represent \$9.73 million in state use tax and \$3.24 million in local use tax. Of the \$9.73 million in state use tax, \$8.6 would be SGF loss and \$1.1 million would be SHF loss.

Administrative Impact

Costs to implement the proposal are estimated at \$36,300. Costs include changes to the tax processing system, testing and informing retailers of the change. The changes to the tax system include the addition of a sourcing indicator to each retailer's account to enable us to track the sourcing method being used.

#### Administrative Problems and Comments

The bill would place Kansas out of compliance with the Agreement, which requires destination sourcing and does not allow individual retailers to choose their sourcing option. The Agreement does provide an option for an associate member state to elect origin sourcing on certain intrastate transactions, subject to certain restrictions, and if at least five such states make this election, then they can become full member states.

However, the origin sourcing election would apply to all retailers.

Changes to Kansas sales tax sourcing methods should follow the requirements of the Agreement to ensure Kansas maintains compliance with the Agreement and keeps its full member status. One of the primary objectives of the Agreement is for member states to make their sales tax laws uniform, in the event Congress were to authorize such states to require remote retailers to collect and remit use tax on sales to customers in member states. If Congress does grant such authority in the future, Kansas would need to once again change its local sales tax sourcing provisions in order to have such authority.

The bill would make the administration of the sales tax difficult for consumers and the department. The department would institute a policy that would provide for a one-time election of the sourcing method a business will use. This sourcing option would be tracked by adding a sourcing field to the tax processing system. Allowing a retailer to determine the situs of a transaction for the local tax will confuse the consumer who is charged the retailer's local tax rate at some businesses and the consumer's situs on others.

#### Taxpayer/Customer Impact

#### Legal Impact

Approved By:

(Embedded image moved to file: pic27446.jpg) Nick Jordan Secretary of Revenue



**ARLEN H. SIEGFREID**  
HOUSE MAJORITY LEADER

February 9, 2011

**MEMORANDUM**

**To: Members of the House Taxation Committee**  
**Re: Support for HB 2161**

Mr. Chairman and Members of the House Taxation Committee:

Among the contents of House Bill 2519, from the 2010 session, was a provision allowing Kansas retailers to return to "origin-based" tax sourcing. This measure gave businesses the option of applying the local sales tax rate at their location to purchases delivered off-site.

In 2003, the Legislature altered the destination-based sourcing rules for sales tax rates charged for shipped merchandise. The following year additional legislation passed giving Kansas retailers the option to utilize origin-based sourcing as an alternative to destination-based sourcing until January 1, 2005. Since then all Kansas retailers have been required to utilize destination based sourcing.

HB 2161 allows retailers to have free choice as to where they cite the tax location for sales consummated at their place of business. Currently, businesses must have some 800 taxing jurisdictions on their computer systems or require employees to look up the tax to determine the rate charged for a good or service. Requiring destination based sourcing has created a huge bureaucratic burden that did not exist before 2003.

The Kansas Sampler started in an Overland Park basement and gradually expanded to multiple locations employing approximately 200 individuals. In recent past, an employee at the Lawrence Kansas Sampler made an error in entering the tax rate on the store's computer system causing it to charge an extra cent in taxes. A reporter became aware of the issue, confronted the store manager who simply thought the store was in a special taxing district and wrote an article on the problem. As a result, the Douglas County District Attorney's Office has an open criminal investigation underway on those involved.

The legislation in 2003 was an effort to capture sales tax from foreign corporations doing website and mail catalog sales in Kansas. However, the legislation created a local use tax and expanded regulatory burden which has evolved to the extent that a simple data entry mistake could result in criminal charges against a Kansas business and one or more of its associates.

Mr. Chairman, the concepts addressed in HB 2161 represent an important tool for our businesses. We need Kansas to have simplified regulations and a truly simple tax structure that does not require superhuman efforts by our retailers to manage. I support the flexibility this legislation provides to our businesses, and respectfully ask the members of this committee join me in supporting the bill.



# AIR CONDITIONING, HEATING & PLUMBING

1717 College St.  
Baldwin City, Ks 66006  
Phone: (785) 594-3357  
Fax: (785) 594-3352

Bill Harmon

785-594-3357

[bill@ah-air.com](mailto:bill@ah-air.com)

I am an owner of A&H Air Conditioning and Heating in Baldwin City, Kansas. We have about 29 employees with about three million a year in total sales. We do residential and commercial service and some non-taxable service to city and government locations. We work mainly in a two hour radius from our shop which is about 129 different sales tax jurisdictions. It is very hard to find service technicians that can figure sales tax correctly for every service call, especially when we work in the 129 different sales tax jurisdictions. Because of this we figure sales tax from our office and then send out a bill. When we receive money in before we've calculated sales tax we back the tax out. We then separate tax out to the 129 different sales tax jurisdictions and send it in to the state. For our industry this is very time consuming and costly. We hope that once it's realized what this has done to our type of business we can pay sales tax using our Baldwin City office location as the point of origin for sale. This would help our company greatly. Thank you for listening.

House Taxation

Date: 2-9-11  
Attachment: 3



Written Testimony for Committee on Tax

Kevin and Shawna Garber, Business Owners  
315 Blaze Blvd, Baldwin City, Kansas 66006  
913-226-0074 cell 785-594-2227 home  
[kevworks@aol.com](mailto:kevworks@aol.com)

February 9, 2011

Representative TerriLois Gregory  
Kansas House of Representatives

Dear Rep. Gregory:

Thanks for taking this testimony before members of the committee of the Kansas House. My wife and I are business owners of two small businesses in the state of Kansas. One of our businesses is a bed and breakfast and collects and pays sales tax locally in Baldwin City. Our second business is a school photography business where we photograph students in a multitude of Kansas cities. I am writing to express concern to the complexity of the tax code that requires destination based sales tax to be collected. We are a small family based business and cannot afford to hire extra staff. As with most small businesses the tasks of managing the business all fall to the small business owner. I can tell you first hand, that the complexity of bookkeeping to accurately account for destination based sales tax in my line of business is overwhelming. We photograph thousands of students each year and consequently must track the destination of the final delivery of our product to legally report and ultimately pay sales tax accordingly. Prior to destination sales tax becoming law, the tax reporting was fairly simple. You tracked your sales for each month and simply reported the total of those sales in the originating city of the sale. In our case 100% of our sales tax would be collected and paid in our home town of Baldwin City. With destination sales tax rules now imposed, we have added multiple destinations and consequently a multitude of sales tax rates and tracking measures. Being a business owner of two businesses, one with destination sales tax and one without, I can attest to the fact that the destination system takes me three times as long to accurately account for and report than the business in which all tax is reported in the city of origination.

I trust that this testimony will be heard and that my testimony will help to adequately represent business owners with similar concerns across the state of Kansas. Please help our state to simplify our sales tax reporting and to allow business to free more of their time from reporting to generating new business. Thank you for your time.

House Taxation  
Date: 2-9-11  
Attachment: 4